

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ETHICON ENDO-SURGERY, INC.,	:	Case No. 1:11-cv-871
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
v.	:	
	:	
COVIDIEN, INC.,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court upon Plaintiff's and Defendant's Joint Motion to Stay the Case Pending Mediation (Doc. 41). For good cause shown, the parties' Motion is hereby **GRANTED** and this action is **STAYED until June 4, 2012**, by which time the parties will notify this Court if there are any claims to be litigated following mediation.

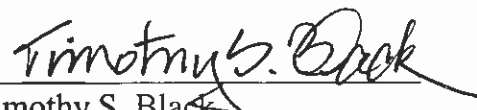
The parties are ordered to proceed as follows:

- (1) Covidien has sent to Ethicon two samples of the accused instrumentality (the Sonicision device) and Ethicon acknowledges receipt;
- (2) Ethicon shall identify and provide written notice of all issued U.S. patents and U.S. patent applications that have received a notice of allowance ("Allowed Applications") alleged to be infringed by the Sonicision device by April 23, 2012 (for the purposes of allegations against the Sonicision device, the notice shall include a good faith identification of the specific patent claims alleged to be infringed);
- (3) If Ethicon identifies any claims in its written notice, the parties will proceed to mediation with a jointly selected mediator and make all reasonable efforts to conclude the mediation by June 1, 2012;

- (4) If the mediation resolves all claims in the April 23, 2012 notice, Ethicon will dismiss its complaint with prejudice;
- (5) If any claims set forth in Ethicon's April 23, 2010 written notice remain unresolved at the conclusion of the mediation, the parties will give notice to the Court of the remaining claims;
- (6) If the mediation does not resolve all claims identified in Ethicon's April 23, 2012 written notice, the infringement claims to be litigated in this Court shall be limited to the unresolved claims raised in the mediation, except that Ethicon may also raise additional patent infringement claims only if Ethicon can demonstrate by clear and convincing evidence to this Court that the additional claims could not have been adequately raised and developed in the mediation;
- (7) If the litigation continues following the automatic lifting of the stay, the parties shall proceed in accordance with the proposed case schedule attached as Exhibit "A" which will apply to the remaining infringement claims to be litigated in this Court;
- (8) Covidien shall withdrawal its Motion to Dismiss (Doc. 11) within 5 days from this Order;
- (9) During the period of the stay, no party shall file any pleading or motion with the Court, except the withdrawal of the motion to dismiss and the notice regarding the results of mediation;
- (10) Covidien shall not be required to move, plead or otherwise answer the Complaint;
- (11) Should the mediation not resolve all of the claims in the April 23, 2012 written notice, by June 13, 2012, Ethicon shall file an amended Complaint limited to identifying Tyco Healthcare Group, LP as a defendant and asserting the unresolved claims raised in the mediation, except that Ethicon may also raise additional patent infringement claims only if Ethicon can demonstrate by clear and convincing evidence to this Court that the additional claims could not have been adequately raised and developed in the mediation.

IT IS SO ORDERED.

Date: 4/9/12


Timothy S. Black
United States District Judge